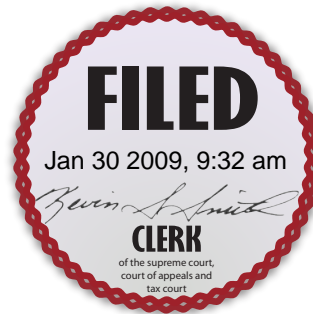


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

R. PATRICK MAGRATH
Alcorn Goering & Sage, LLP
Madison, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

JANINE STECK HUFFMAN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

SEAN WELTON,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 40A01-0809-CR-421
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE JENNINGS CIRCUIT COURT
The Honorable Jon W. Webster, Judge
Cause No. 40C01-0707-FC-133

January 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Sean Welton appeals following his conviction, pursuant to a guilty plea, for Class C felony Burglary,¹ for which he received an eight-year sentence, with seven years executed in the Department of Correction and one year suspended to probation. Upon appeal, Welton claims that his sentence was inappropriate in light of his character and the nature of his offense. We affirm.

FACTS AND PROCEDURAL HISTORY

According to the factual basis entered during the guilty plea hearing, on June 28, 2007, Welton broke and entered the building of Ebbing Auto Sales (“Ebbing”), located in Jennings County, with the intent to commit the felony of theft. Welton does not dispute that, during this burglary, he caused \$4500 in damage by taking approximately 123 aluminum wheels from Ebbing. In committing the burglary and taking the wheels, Welton enlisted the help of his fourteen-year-old son. Upon searching Welton’s residence, authorities discovered multiple items which had been reported stolen from neighbors and Welton’s place of employment.

On July 3, 2007, the State charged Welton with Class C felony burglary (Count I) and two counts of Class D felony receiving stolen property (Counts II and III). On April 17, 2008, Welton entered into a plea agreement whereby he agreed to plead guilty to burglary, and the State agreed to dismiss the remaining charges. The parties further agreed to leave Welton’s sentence and the amount of restitution to the discretion of the trial court. Upon sentencing Welton, the trial court found as aggravating factors his criminal history, his enlisting the aid of his fourteen-year-old son and accompanying

¹ Ind. Code § 35-43-2-1 (2006).

violation of a position of trust, his apparent possession of other stolen property, and the premeditated nature of the crime. The trial court found as mitigating factors Welton's admission to the crime, his status as a high-school graduate, his employment, his status as a United States Army veteran, and the hardship of incarceration to his children. The trial court concluded that the aggravating factors outweighed the mitigating factors and sentenced Welton to serve eight years, with seven years executed in the Department of Correction and one year suspended to probation. The trial court also ordered Welton to pay \$4500 to Ebbing in restitution. This appeal follows.

DISCUSSION AND DECISION

On appeal, Welton argues that his sentence is inappropriate in light of his character and the nature of his offense. Article VII, Sections 4 and 6 of the Indiana Constitution “authorize[] independent appellate review and revision of a sentence imposed by the trial court.” *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007) (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006) (emphasis and internal quotations omitted)). Such appellate authority is implemented through Indiana Appellate Rule 7(B), which provides that the “Court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” We exercise deference to a trial court’s sentencing decision, both because Rule 7(B) requires that we give “due consideration” to that decision and because we recognize the unique perspective a trial court has when making sentencing decisions. *Stewart v. State*, 866

N.E.2d 858, 866 (Ind. Ct. App. 2007). It is the defendant's burden to demonstrate that his sentence is inappropriate. *Childress*, 848 N.E.2d at 1080.

Welton's challenge to the appropriateness of his sentence is premised upon his claim that he received the maximum sentence. Under Indiana Code section 35-50-2-6 (2006), a person who commits a Class C felony shall be imprisoned for a fixed term of between two and eight years, with the advisory sentence being four years. Here, the trial court sentenced Welton to eight years, with seven years executed and one year suspended to probation. There is currently a split on this court as to whether a "maximum sentence" measured in terms of years, qualifies as a "maximum sentence" if, as in the case here, some or all of those years are suspended. *Compare Bauer v. State*, 875 N.E.2d 744, 749 (Ind. Ct. App. 2007) ("When considering the duration of a sentence, a year is still a year, regardless of whether it is executed or suspended."), *trans. denied*, with *Beck v. State*, 790 N.E.2d 520, 522 (Ind. Ct. App. 2003) (confirming appropriateness of sentence, which although "maximum sentence" in terms of days, was suspended and therefore not "maximum punishment" of an executed sentence). Here, even if, as Welton contends, his sentence is construed as a "maximum sentence," we nevertheless conclude it is appropriate.

Regarding the nature of his offense, Welton argues that his crime was a relatively uneventful non-residential burglary, and much of the property was returned to its owner. While his burglary was non-residential, this was reflected in Welton's Class-C-felony-level conviction. In addition, even if the property was returned, the nature of this perhaps

otherwise routine burglary includes Welton's enlistment of assistance from his fourteen-year-old son, which certainly elevates the severity of the crime.

With respect to his character, Welton argues that his many personal accomplishments evidence his upstanding moral character, and that his aggravated sentence is unwarranted in light of such character. In support of this argument, Welton points to *Kemp v. State*, 887 N.E.2d 102, 105-06 (Ind. Ct. App. 2008), *trans. denied*, wherein this court reduced a church administrator's sentence for, *inter alia*, multiple counts of theft based in large part upon his complete lack of criminal history. Here, as Welton acknowledges, he does not have a complete lack of criminal history. Indeed, he has three prior felony convictions, also for property-related crimes, including a 1998 conviction for theft and 2003 and 2004 convictions for receiving stolen property. In addition, any recognition of Welton's involvement in his children's lives must be tempered by his "Fagin-like" use of his son to accomplish his crime. Welton's contribution to delinquency in this case minimizes any positive impact of his claimed participation in the lives of his children.

Given the circumstances of Welton's burglary, which involved his minor child, and our view of Welton's character in light of his criminal history, we are convinced that his eight-year sentence, with seven years executed and one year suspended to probation, is appropriate.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and MAY, J., concur.